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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/684,859

10/14/2003

David Scharp

NOVCEL.000GEN

4801

20995 7590 06/01/2007  
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EXAMINER
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AZPURU, CARLOS A

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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06/01/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/684,859	<b>Applicant(s)</b> SCHARP ET AL.	
	<b>Examiner</b> Carlos A. Azpuru	<b>Art Unit</b> 1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above claim(s) 17-74 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 75-97 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-16 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01202004.08062004.01</u> <b>122007</b> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I in the reply filed on 03/12/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 17-74 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 03/12/2007.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Desai et al (US Patent No. 5,834,556).

Desai et al disclose a PEG copolymer coating for cells which contacts cells or tissues (see Abstract; Col. 2, lines 24-40; col. 4, lines 1-100. Molecular weight of the polymer is found at col. 4, lines 22-29. The cell density is found at col. 2, lines 55-57. The devices of the are liposomes (see col. 6, lines 40-67). Any cell can be used including cell aggregates (tissue) as stated at col. 5, lines 60-67. Specific cells are listed at col. 5, lines 13-19. The instant claims are anticipated by desai et al.

Claims 1-4, 6-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hubbell et al (US Patent No. 5,834,274).

Hubbell et al disclose water soluble macromers as coatings for cells (see Abstract). Cells and tissues (cell aggregates) are listed at col., 7, lines 65-67; col. 8, lines 1-30, and include pancreatic cells. Peg is listed at col. 6, line 21, are preferred polymers as disclosed throughout the reference. Microspheres having a diameter between 400 and 1000 microns are found at col. 3, lines 19-20. Cell density can be calculated to be within the claimed amount given the number of cells in Example 7 (500, 000 cells are disclosed, and each coated)/1 ml (col. 20, line 16). Entrapment may be in microspheres of less than 5 microns (see col. 29, lines 60-61). Given the ratio of devices at col. 3, lines 19-20, to the cells, the ratio falls well within the claimed parameters, and can be as small as 2:1 (200 micron cell diameter : 400 device diameter). The instant claims are anticipated by Hubbell et al.

***Allowable Subject Matter***

Claims 75-97 are allowed over the prior art as regards the particular devices described in claim 1. If applicant amends claim 1 to contain the particulars of claim 75, the prior art rejections of claim 1 will be overcome since the art does not teach these particulars.

Applicant is further advised that if claims 75-97 are pursued as is, a restriction requirement will follow since as written these claims are purely polymer chemistry and should be classified and examined by Group 1700.

Claim 5 is objected to as dependent upon a rejected base claim.

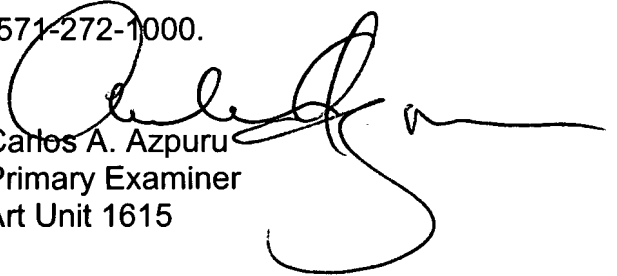
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Carlos A. Azpuru  
Primary Examiner  
Art Unit 1615

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